

1 that may be something to consider, but --

2 CHAIRMAN FESMIRE: That would be a question we'd
3 need to ask, you know, get them to represent to us that
4 they have a legal right to do it, because --

5 COMMISSIONER OLSON: Because don't they have it
6 signed in the APD now, right? That they have a legal right
7 to drill at that --

8 CHAIRMAN FESMIRE: Yeah.

9 COMMISSIONER OLSON: -- location. Then they'd
10 have to -- So I was thinking along the same lines of all
11 those things, is why I was -- where I was coming back to
12 that. But I wasn't thinking of it for -- as -- it's not
13 necessarily a -- Landowner approval, that doesn't mean that
14 it's protecting groundwater or public health or --

15 COMMISSIONER BAILEY: But if SOPA didn't go so
16 far --

17 COMMISSIONER OLSON: Uh-huh.

18 COMMISSIONER BAILEY: -- as to allow the surface
19 owner to absolutely veto, then we would be overstepping.

20 COMMISSIONER OLSON: But see, I don't see it as a
21 veto, because that --

22 MS. BADA: I think the problem is, you do not
23 have any definitive case saying whether burial on site is
24 reasonable access to the surface. You just don't. And as
25 long as that's not out there, you're -- it's an open

1 question.

2 COMMISSIONER BAILEY: Uh-huh.

3 COMMISSIONER OLSON: As long as what they have --
4 and that's the case, that's -- it's dig-and-haul, doesn't
5 mean you can't drill it, just you've got to -- in that
6 circumstance, you've got to dig-and-haul it, you know?

7 MS. BADA: I mean, there are opinions on both
8 sides of it, that's reasonable access.

9 COMMISSIONER OLSON: Uh-huh.

10 MS. BADA: We don't have a decision out.

11 COMMISSIONER BAILEY: And until the Legislature
12 or the courts give some guidance on that --

13 COMMISSIONER OLSON: Uh-huh.

14 COMMISSIONER BAILEY: -- I don't see us as being
15 the test case.

16 MS. BADA: As you might be, if you include it.

17 COMMISSIONER OLSON: Because the other aspect
18 that that was coming down, this is coming more to the
19 burrito system, because you're leaving high-level wastes
20 behind.

21 What I was looking at, you know, if something is
22 buried on the site, then there should be some kind of a
23 deed notice to it, so how does somebody know in the future
24 not to go dig it up? Now I don't know if that's
25 necessarily as important if you're only leaving levels that

1 aren't really causing a problem, that can be left on the
2 surface. Then the only thing you've really got is the
3 plastic, you're not leaving out -- it's not -- not like
4 you're going to go through and dig up, you know, 80,000
5 chlorides and end up spreading it all around and causing a
6 problem.

7 Because I was looking at that when they were
8 talking about the burrito, is just to -- thinking, you
9 know, you'd need to somehow notice that. That's what --
10 part of the problem is where they came up with the Shell-
11 Westgate, here it was you had something that was buried in
12 the '50s that nobody had any idea was even there, just
13 covered up.

14 COMMISSIONER BAILEY: Wasn't there a P-and-A
15 marker --

16 COMMISSIONER OLSON: No, there --

17 COMMISSIONER BAILEY: -- or a well marker? No
18 well marker there?

19 COMMISSIONER OLSON: No, there was just an old
20 pit that was there. It wasn't a drilling pit, this was
21 actually an old production pit.

22 COMMISSIONER BAILEY: So there was a well
23 somewhere in the vicinity.

24 COMMISSIONER OLSON: Yeah, the well is about --
25 It's still an active well. It's over -- it was probably

1 150 feet away, something like that.

2 COMMISSIONER BAILEY: Okay, and there was a
3 marker on the well?

4 CHAIRMAN FESMIRE: No, it was an active --

5 COMMISSIONER OLSON: It's an active well --

6 COMMISSIONER BAILEY: It's an active well --

7 COMMISSIONER OLSON: -- you know.

8 COMMISSIONER BAILEY: -- okay. So what I was
9 going to throw out was, on the C-102, why not require
10 locations of the pits as part of the APD approval of the
11 C-101 and -102? And that way, there is a permanent record,
12 and anybody who sees either a well or a dryhole marker, a
13 plug marker, could always go to the OCD to find where the
14 pits are.

15 COMMISSIONER OLSON: Well, I don't have a problem
16 with that, but I don't think they're going to go to OCD if
17 they're drilling like a -- you know, the property
18 transaction, somebody buys the property, they don't
19 necessarily go to OCD to look if there's -- see if there's
20 something there, you know?

21 I was thinking along the lines of -- and I'll
22 admit, I was thinking of this for the cases we were talking
23 about from both the industry committee and OCD of leaving
24 something in place that's like 70,000 to 100,000 chlorides.

25 In that kind of case, the whole point to having the

1 burrito there is, you don't want to disturb it in the
2 future.

3 COMMISSIONER BAILEY: Uh-huh.

4 COMMISSIONER OLSON: But there's less of a
5 concern with, you know, tacos that meet the --

6 CHAIRMAN FESMIRE: -- requirement --

7 COMMISSIONER OLSON: -- the surface requirements.

8 If it can be left on the surface, obviously that -- it's
9 not really posing a threat at that point. You may still
10 have some incidental metals and other things, but the
11 volume of that is a lot less, so...

12 CHAIRMAN FESMIRE: Cheryl, would we have the same
13 kind of problem if we required notice, rather than consent?

14 MS. BADA: Actually, I don't think so. The only
15 question you might have is how long the county clerk will
16 actually keep the deed --

17 COMMISSIONER BAILEY: No, you all are talking two
18 different things. He's gone back to SOPA approval.

19 COMMISSIONER OLSON: Well, he was speaking of it
20 in terms of the protection of fresh waters, public health
21 and the environment. I think you do have -- I think
22 there's a good rationale for it there, just because you
23 could say, Hey, look, we're trying to -- I need to protect
24 public health from direct access to the materials, you
25 know. So you don't want people not knowing that they're

1 digging these things up --

2 CHAIRMAN FESMIRE: Exactly.

3 COMMISSIONER OLSON: -- you know? So I think
4 there's more justification in that -- for that.

5 MS. BADA: I think the deed notice -- you know,
6 how effective it actually is in reality and --

7 COMMISSIONER OLSON: Right.

8 MS. BADA: -- how the county clerks would
9 implement it and -- Yeah, I think as far as --

10 COMMISSIONER OLSON: And whether --

11 MS. BADA: -- it's easily justi- --

12 COMMISSIONER OLSON: Whether a title company will
13 really pick that up is --

14 MS. BADA: Yeah.

15 COMMISSIONER OLSON: -- might be another story,
16 but at least you've tried to make an attempt to alert
17 future landowners to the things actually there, so...

18 And that could be a way around doing surface
19 owner approval too, potentially, and say -- because there
20 is a justification for the noticing of it.

21 COMMISSIONER BAILEY: So if they can prove that
22 they have provided notice to the surface owner that they're
23 going to --

24 COMMISSIONER OLSON: No, this would be actually
25 putting some type of a -- something --

1 MS. BADA: Filing a notice.

2 COMMISSIONER OLSON: Filing a notice with the --

3 MS. BADA: -- county --

4 COMMISSIONER OLSON: -- county --

5 MS. BADA: -- clerk --

6 COMMISSIONER OLSON: -- that this --

7 MS. BADA: -- that certain property, there's --

8 COMMISSIONER BAILEY: So the location of the pit?

9 COMMISSIONER OLSON: Uh-huh.

10 COMMISSIONER BAILEY: Okay.

11 COMMISSIONER OLSON: So it should show up if
12 there's a title -- you know, a title search on the
13 property. It should show up as attached to that property.

14 COMMISSIONER BAILEY: Okay.

15 MS. BADA: That, I don't think, presents any
16 problem. You know, the practicalities of it may.

17 COMMISSIONER OLSON: Yeah.

18 MS. BADA: We may learn as we go.

19 COMMISSIONER OLSON: Right.

20 CHAIRMAN FESMIRE: Well, I understand Jami's
21 argument, I understand the arguments in the briefs. And I
22 understand what you're saying, that that may be outside
23 what we're capable of doing.

24 So I would say that -- you know, that there's
25 evidence in the record to support a notification

1 requirement, but not a -- and Bill, I --

2 COMMISSIONER OLSON: We may disagree, but
3 that's --

4 CHAIRMAN FESMIRE: Well, I see your point.
5 Believe me, I see your point. But I think it's --

6 COMMISSIONER OLSON: Because I just kind of stick
7 to the side of the -- of what was brought up, that you
8 still need to show that you've got a legal right to do what
9 you're doing.

10 CHAIRMAN FESMIRE: And we do have that
11 requirement.

12 COMMISSIONER OLSON: Uh-huh.

13 CHAIRMAN FESMIRE: The break there is whether
14 that legal right to drill a well includes the legal right
15 to leave the --

16 COMMISSIONER OLSON: Right.

17 CHAIRMAN FESMIRE: -- material on site.

18 COMMISSIONER OLSON: Which hasn't really been
19 decided in any conclusive way.

20 CHAIRMAN FESMIRE: And my reasoning is that what
21 you're talking about may be important, if they have that
22 right, it may be a tort --

23 COMMISSIONER OLSON: Uh-huh.

24 CHAIRMAN FESMIRE: -- but that may be, in some
25 circumstances, outside of our realm of responsibility.

1 COMMISSIONER OLSON: Well, if you filed a deed
2 notice on my probably, you'd probably have a tort.

3 (Laughter)

4 MS. BADA: If you bury it in place on my property
5 you'd probably have a lawsuit --

6 (Laughter)

7 MS. BADA: -- but that's a whole 'nother story.

8 COMMISSIONER BAILEY: But that does bring up,
9 should the C-102s indicate where the pits are going to be?

10 MS. BADA: I think that is --

11 COMMISSIONER OLSON: I think it should, you know,
12 uh-huh. There should be final records filed with the
13 Division of the -- because actually, by the time you've
14 done the final closure, you -- that's what should really be
15 definitive of where it was located, you know. Because
16 things might change --

17 COMMISSIONER BAILEY: Okay, so that would be with
18 the C-105, along with --

19 COMMISSIONER OLSON: Right.

20 COMMISSIONER BAILEY: -- completion record --

21 COMMISSIONER OLSON: Right.

22 COMMISSIONER BAILEY: -- have a plat indicating
23 where the pits --

24 COMMISSIONER OLSON: Right.

25 COMMISSIONER BAILEY: -- are located in

1 relationship to the wellbore.

2 COMMISSIONER OLSON: As part of the closure,
3 uh-huh.

4 MS. BADA: C-105 is the closure, and then C-102
5 is the APD?

6 CHAIRMAN FESMIRE: The proposed pit -- yeah,
7 proposed drilling --

8 MS. BADA: Well -- Yeah.

9 COMMISSIONER OLSON: You have a proposal and a
10 final, it might change, but --

11 MS. BADA: Yeah, okay.

12 CHAIRMAN FESMIRE: Okay, we can leave it like
13 that. Okay?

14 Any other issues that we might be able to bring
15 up?

16 MS. BADA: What else? Below grade tanks --

17 COMMISSIONER OLSON: Oh, did we talk about the --
18 yeah, the soil criteria for the -- if you're doing the dig-
19 and-haul, you've got to take samples from below the -- soil
20 samples from below the pit --

21 MS. BADA: Yeah, so what criteria would you --

22 COMMISSIONER OLSON: -- one of your criteria for
23 the triggers, and I think we talked about, again, the
24 landfarm criteria as the triggers.

25 CHAIRMAN FESMIRE: Is that going to be